

State of Wisconsin



April 1998 Special Session
Assembly Bill 3

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1997 WISCONSIN ACT 302

AN ACT *to repeal* 422.201 (12), 422.203 (4) (b), 422.402 (1) (c), 422.402 (1m) (c), 422.413 (2), 422.417 (1) (e), 424.208 (1) (b), 424.301 (1) (b) 4., 425.114 and 425.206 (1) (d); *to consolidate, renumber and amend* 424.208 (1) (intro.) and (a); *to amend* 421.203 (1), 421.301 (17), 422.201 (8), 422.203 (4) (a), 422.203 (4) (c), 422.207 (1), 422.209 (2) (b) 1., 422.209 (2) (b) 2., 422.411 (1), 422.412, 422.413 (1), 422.417 (1) (c), 422.417 (1) (d), 422.417 (2), 422.418 (2), 422.421 (6) (a), 422.501 (3), 423.201, 425.103 (2) (a), 425.206 (1) (b), 425.206 (1) (c), 425.207 (2), 425.208 (1) (intro.), 425.208 (1) (cm), 427.102, 427.103 (1) and 427.104 (1) (intro.); and *to create* 421.202 (10) and 422.210 of the statutes; **relating to:** excluding agricultural transactions from provisions of the Wisconsin consumer act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 421.202 (10) of the statutes is created to read:

421.202 (10) Transactions that are primarily for an agricultural purpose, except that this subsection does not exclude transactions that are primarily for an agricultural purpose from ch. 427 and except that this subsection does not exclude credit transactions that are primarily for an agricultural purpose from s. 422.210.

SECTION 2. 421.203 (1) of the statutes is amended to read:

421.203 (1) Consumer credit transactions, not governed by ch. 428, which are made, insured or guaranteed by the federal government or any agency thereof, or by any federal instrumentality chartered under the federal farm credit act of 1971 (P.L. 92-181; 85 stats. 583; 12 USC 2001 et seq.), or by the department of veteran's affairs shall be subject to only those provisions set forth in sub. (2).

SECTION 3. 421.301 (17) of the statutes is amended to read:

421.301 (17) "Customer" means a person other than an organization (s. 421.301 (28)) who seeks or acquires real or personal property, services, money or credit for personal, family, or household purposes or, for purposes of ch. 427 only, for agricultural purposes. A person other than a customer may agree to be governed by chs. 421 to 427 with respect to all aspects of a transaction and in such event such person shall be deemed a customer for all purposes of chs. 421 to 427 with respect to such transaction.

SECTION 4. 422.201 (8) of the statutes is amended to read:

422.201 (8) That portion of the finance charge consisting of an amount equal to a discount of 5% or less of the stated price which is offered to induce payment in full within a stated period of time in connection with ~~a sale for agricultural purposes or a sale of particular goods and services for which credit is not otherwise available from the merchant~~ shall not be included in the finance charge for the purpose of determining the maximum rate of

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

finance charge under sub. (2) or (3) with respect to a customer who does not pay in full within such time.

SECTION 5. 422.201 (12) of the statutes is repealed.

SECTION 6. 422.203 (4) (a) of the statutes is amended to read:

422.203 (4) (a) With respect to a consumer credit transaction ~~other than one primarily for an agricultural purpose~~, interest after the final scheduled maturity date may not exceed the greater of either 12% per year or the annual rate of finance charge assessed on that transaction if the transaction is entered into on or after April 6, 1980 and prior to November 1, 1981, and may not exceed the maximum rate permitted by s. 138.05 (1) (a), if the transaction is entered into prior to April 6, 1980, but if such interest is charged no delinquency charge may be taken on the final scheduled instalment.

SECTION 7. 422.203 (4) (b) of the statutes is repealed.

SECTION 8. 422.203 (4) (c) of the statutes is amended to read:

422.203 (4) (c) With respect to a consumer credit transaction ~~other than one primarily for an agricultural purpose~~, interest after the final scheduled maturity date shall not exceed the greater of either 12% per year or the annual rate of finance charge assessed on that transaction if the transaction is entered into on or after November 1, 1981, but if interest is charged no delinquency charge may be taken on the final scheduled instalment.

SECTION 9. 422.207 (1) of the statutes is amended to read:

422.207 (1) With respect to a consumer credit transaction the parties may, to the extent not prohibited by chs. 421 to 427 and 429, agree that the customer will perform certain duties with respect to preserving or insuring collateral or goods subject to a motor vehicle consumer lease, if such duties are reasonable in relation to the risk of loss of or damage to the collateral or goods. If the customer fails to so perform the creditor may, if authorized by the agreement, pay for the performance of such duties on behalf of the customer. The amount paid may be added to the unpaid balance of the customer's obligation, if, in the absence of performance, the merchant has made all expenditures on behalf of the customer in good faith and in a commercially reasonable manner and ~~except in the case of a transaction for an agricultural purpose where the collateral is perishable and threatens to decline speedily in value, the merchant has given the customer written notice of the nonperformance and reasonable opportunity after such notice to so perform.~~

SECTION 10. 422.209 (2) (b) 1. of the statutes is amended to read:

422.209 (2) (b) 1. The portion of the finance charge which is allocable to all unexpired payment periods as scheduled or deferred. A payment period is unexpired if prepayment is made within 15 days after the payment's due date. The unearned finance charge is the finance charge which, assuming all payments are made as sched-

uled or deferred, would be earned for each unexpired payment period by applying to unpaid balances of principal, according to the actuarial method, the annual percentage rate disclosed to the customer under subch. III ~~or, in the case of a transaction for an agricultural purpose, the annual percentage rate based on the finance charge.~~ The creditor may decrease the annual interest rate to the next multiple of 0.25%.

SECTION 11. 422.209 (2) (b) 2. of the statutes is amended to read:

422.209 (2) (b) 2. The finance charge less the amount determined by applying the annual percentage rate disclosed to the customer under subch. III ~~or, in the case of a transaction for an agricultural purpose, the annual percentage rate based on the finance charge~~, according to the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

SECTION 12. 422.210 of the statutes is created to read:

422.210 Agricultural credit transactions. (1) PERMISSIBLE FINANCE CHARGES AND FEES. With respect to a credit transaction that it is primarily for an agricultural purpose, a creditor may not charge, collect or receive any finance charge or fee unless the charge or fee is clearly disclosed in writing to the customer and that is agreed to by the creditor and the customer.

(2) PENALTY. A violation of this section is subject to s. 425.304.

SECTION 13. 422.402 (1) (c) of the statutes is repealed

SECTION 14. 422.402 (1m) (c) of the statutes is repealed.

SECTION 15. 422.411 (1) of the statutes is amended to read:

422.411 (1) Except as provided in subs. (2) and (2m), with respect to a consumer credit transaction no term of a writing may provide for the payment by the customer of attorney fees. ~~Notwithstanding subs. (2) and (2m), a consumer credit transaction may not provide for the payment by the customer of attorney fees if the transaction is for an agricultural purpose.~~

SECTION 16. 422.412 of the statutes is amended to read:

422.412 Restriction on liability in consumer lease. In a consumer lease ~~other than one for an agricultural purpose~~, the obligation of a customer upon expiration of the lease may not exceed the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property occasioned by other than normal use or for other default.

SECTION 17. 422.413 (1) of the statutes is amended to read:

422.413 (1) Except as provided in ~~subs. (2) and sub.~~ (2g), no term of a writing evidencing a consumer credit transaction may provide for any charges as a result of default by the customer other than reasonable expenses incurred in the disposition of collateral or goods subject to

a motor vehicle consumer lease and such other charges as are specifically authorized by chs. 421 to 427 and 429.

SECTION 18. 422.413 (2) of the statutes is repealed.

SECTION 19. 422.417 (1) (c) of the statutes is amended to read:

422.417 (1) (c) Real property to which the property sold is affixed, or which is maintained, repaired or improved as a result of the sale of the property or services, if the obligation secured is \$1,000 or more; and

SECTION 20. 422.417 (1) (d) of the statutes is amended to read:

422.417 (1) (d) Goods of the consumer which were the subject of a prior transaction with the seller which is consolidated (s. 422.206) with the consumer credit sale, or if the consumer credit sale is made pursuant to an open-end credit plan, goods previously purchased by the consumer pursuant to the plan, subject however to s. 422.418; and

SECTION 21. 422.417 (1) (e) of the statutes is repealed.

SECTION 22. 422.417 (2) of the statutes is amended to read:

422.417 (2) With respect to a consumer lease, except as otherwise provided in s. 429.205 with respect to a motor vehicle consumer lease, a lessor may not take a security interest in any property owned or leased by the customer other than the leased goods to secure the lessor's obligations under the lease. This subsection does not prohibit a security interest in a cash security deposit for a consumer lease of motor vehicles ~~or agricultural equipment.~~

SECTION 23. 422.418 (2) of the statutes is amended to read:

422.418 (2) For the purpose of determining the extent to which a consolidated obligation is secured after a consolidation of consumer sales ~~other than sales primarily for an agricultural purpose,~~ and after a consolidation of consumer loans in which one or more of the loans consolidated is secured by a purchase money security interest in property of the type described in s. 422.417 (3) (a), payments received by the creditor after a consolidation agreement are deemed to have been first applied to the payment of obligations arising from the transactions first made. To the extent that obligations are paid pursuant to this section, security interests in items of property terminate as the obligation originally incurred with respect to each item is paid.

SECTION 24. 422.421 (6) (a) of the statutes is amended to read:

422.421 (6) (a) ~~Except as provided in s. 422.201 (12),~~ For any variable rate transaction, other than one pursuant to an open-end credit plan, entered into before November 1, 1984, the maximum rate of finance charge for any payment period may not exceed the limit set forth in s. 422.201 (2) (bm) as determined on the earlier of the

first day of the payment period or the day notice is given under sub. (5) for the payment period.

SECTION 25. 422.501 (3) of the statutes is amended to read:

422.501 (3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, that is offered or granted for debt that is incurred primarily for personal, family, or household ~~or agricultural~~ purposes.

SECTION 26. 423.201 of the statutes is amended to read:

423.201 Definition. "Consumer approval transaction" means a consumer transaction other than a sale or lease or listing for sale of real property; or a sale of goods at auction, ~~the sale or lease of goods for an agricultural purpose or a loan made to finance the sale of goods at auction for an agricultural purpose~~ 1) which is initiated by face-to-face solicitation away from a regular place of business of the merchant or by mail or telephone solicitation directed to the particular customer and 2) which is consummated or in which the customer's offer to contract or other writing evidencing the transaction is received by the merchant away from a regular place of business of the merchant and involves the extension of credit or is a cash transaction in which the amount the customer pays exceeds \$25. "Consumer approval transaction" shall in no event include a catalog sale which is not accompanied by any other solicitation or a consumer loan conducted and consummated entirely by mail.

SECTION 27. 424.208 (1) (intro.) and (a) of the statutes are consolidated, renumbered 424.208 (1) and amended to read:

424.208 (1) The initial amount of credit life insurance shall not exceed the total amount repayable under the contract of indebtedness however the indebtedness may be repayable, but: ~~(a) In in~~ in cases where an indebtedness is repayable in substantially equal instalments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater; and

SECTION 28. 424.208 (1) (b) of the statutes is repealed.

SECTION 29. 424.301 (1) (b) 4. of the statutes is repealed.

SECTION 30. 425.103 (2) (a) of the statutes is amended to read:

425.103 (2) (a) With respect to a transaction other than one pursuant to an open-end plan; if the interval between scheduled payments is 2 months or less, to have outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after the scheduled or deferred due dates, or the failure to pay the first payment or the last payment, within 40 days of its scheduled or deferred due date; if the interval between scheduled payments is more than 2 months, to have all or

any part of one scheduled payment unpaid for more than 60 days after its scheduled or deferred due date; or, if the transaction is scheduled to be repaid in a single payment, to have all or any part of the payment unpaid for more than 40 days after its scheduled or deferred due date; ~~or in the case of a transaction for an agricultural purpose, the failure to pay the first or the only instalment when due or to pay any other instalment within 40 days of its original or deferred due date.~~ For purposes of this paragraph the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the instalment most delinquent and then to subsequent instalments in the order they come due;

SECTION 31. 425.114 of the statutes is repealed.

SECTION 32. 425.206 (1) (b) of the statutes is amended to read:

425.206 (1) (b) Judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205, or for possession of the collateral or leased goods under s. 425.203 (2); or

SECTION 33. 425.206 (1) (c) of the statutes is amended to read:

425.206 (1) (c) The merchant has taken possession of collateral or leased goods pursuant to s. 425.207 (2); ~~or~~

SECTION 34. 425.206 (1) (d) of the statutes is repealed.

SECTION 35. 425.207 (2) of the statutes is amended to read:

425.207 (2) A merchant who reasonably believes that a customer has abandoned collateral or goods subject to a consumer lease may take possession of such collateral or leased goods and preserve it. However, the customer may recover such collateral or leased goods upon request unless at the time of request the customer has surrendered the collateral or leased goods, or judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205 or in a judgment described in s. 425.203 (2). A merchant taking possession of collateral or leased goods pursuant to this section shall promptly send notification to the customer's last-known address of such action and of the customer's right to recover such collateral or leased goods under this section. If the collateral or leased goods are recovered by the customer pursuant to this section, it shall be returned to the customer at the location where the merchant took possession of such collateral or leased goods pursuant to this section or, at the option of the merchant, at such other location designated by the customer; and any expense incurred by the merchant in taking possession of, holding

and returning the collateral or leased goods to the customer shall be borne by the merchant. If after taking possession of collateral or leased goods pursuant to this subsection, the merchant perfects the right to possession through a surrender by the customer or a judgment under s. 425.203 (2) or 425.205, the customer is liable for the expenses set forth in s. 409.504 (1). In determining such expenses, leased goods shall be considered collateral under s. 409.504 (1). However, a customer is not liable for expenses of holding the collateral or leased goods from the time the merchant takes possession until the merchant perfects the right to possession in the manner provided in this subsection. ~~This subsection shall not apply to collateral recovered in accordance with s. 425.114.~~

SECTION 36. 425.208 (1) (intro.) of the statutes is amended to read:

425.208 (1) (intro.) For a period of 15 days following exercise by the creditor of nonjudicial enforcement rights (s. 425.206) or issuance of process (s. 425.205) with regard to the collateral, the customer shall, ~~except in a transaction for an agricultural purpose if otherwise agreed in writing after default,~~ be entitled to redeem the goods by tendering:

SECTION 37. 425.208 (1) (cm) of the statutes is amended to read:

425.208 (1) (cm) If a writing evidencing the consumer credit transaction so provides, expenses the creditor is entitled to recover under s. 422.413 (2) ~~and~~ (2g) (a) and (b); plus

SECTION 38m. 427.102 of the statutes is amended to read:

427.102 Scope. This chapter applies to conduct and practices in connection with the collection of obligations arising from consumer transactions, including transactions that are primarily for an agricultural purpose.

SECTION 39m. 427.103 (1) of the statutes is amended to read:

427.103 (1) "Claim" means any obligation or alleged obligation arising from a consumer transaction, including a transaction that is primarily for an agricultural purpose.

SECTION 40m. 427.104 (1) (intro.) of the statutes is amended to read:

427.104 (1) (intro.) In attempting to collect an alleged debt arising from a consumer credit transaction or other consumer transaction, including a transaction primarily for an agricultural purpose, where there is an agreement to defer payment, a debt collector shall may not: